

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3816 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

K S TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioners

MR HL JANI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/11/97

ORAL JUDGEMENT

1. The petitioners are the Malaria Surveillance workers and they filed this special civil application challenging thereunder the order dated 18th July, 1984, annexure 'A' under which they have been transferred to different places from Baroda. Challenge has been made to this order on the ground that the District Development Officer has no power to transfer the petitioners.

2. In reply to the special civil application, the respondents have come up with a case that the Government vide its order dated 11-5-1983 directed the District Development Officer to exercise the powers to effect the transfer of employees in the District for administrative convenience and in the interest of public services. This averment of the respondent has not been controverted by the petitioners in the rejoinder. In the rejoinder the only case is that the D.D.O. could have exercised the powers in special case. However, that defence is not tenable for the reason that from the reply of the special civil application I am satisfied that the transfer of the petitioners was necessary in the public interest.

3. The next submission has been made that the deputation of the petitioners to District Panchayat itself was bad. Though necessary pleadings in this respect have not been made by the petitioners but still if we go by what the learned counsel for the petitioners contended then the deputation has been ordered in the year 1978 and in the original petition that order has not been challenged. By amendment, a prayer has been incorporated for quashing of those deputation of the petitioners to the District Panchayat but even the order of deputation has not been produced. Moreover in the special civil application no factual averment as well as the ground of challenge has been made. Above all, this challenge to deputation made by the petitioners after more than six years suffers from the defect of delay and laches. The transfer of an employee is subject to judicial scrutiny of this Court only on two grounds namely where it is a malafide and secondly where while ordering the transfer of an employee some statutory provision has been violated. It is not the case of the petitioners that the order of transfer has been made malafide. So far as the second ground is concerned, the petitioners have also failed to show which of the statutory provision has been violated by the respondents in making their order of transfer.

4. So this writ petition is wholly misconceived. Though the order of transfer of the petitioners impugned in this special civil application is perfectly legal and justified and this writ petition deserves to be dismissed and accordingly it is dismissed, however, it is made clear that for all these years, this order has not been given effect to as this Court has granted the interim relief in favour of the petitioners, so before effecting this order now the respondents shall take the care that in case it is now not necessary then this order may not be given effect to only on the ground that this petition

has been dismissed. The special civil application is dismissed and rule is discharged with no order as to costs.

zgs/-